IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

WP(C).No. 17869 of 2007(B)

PETITIONER:

M.K.MOHAMMEDALI JINNAH, AGED 58,
MANAGER, IIVUP SCHOOL, MALIPPURAM,
VYPEEN.

BY ADV. SRI.S.SACHITHANANDA PAI

RESPONDENTS:

1. SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM.

2. THE ASST. EDUCATIONAL OFFICER,
VYPEEN, EDAVANAKKAD, ERNAKULAM DISTRICT.

3. C.A.JAMEELA IBRAHIM, W/O V.K.IBRAHIM,
ARABIC TEACHER, IIVUP SCHOOL, MALIPPURAM.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA
GOVERNMENT PLEADER T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No. 17869/07.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE JUDGMENT IN W.P.C.NO.34948/04 OF THIS COURT.

P2. COPY OF THE GOVT. ORDER DTD.20.1.07.

P3. COPY OF THE DEMAND DTD.2.3.07 BY R2.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.17869 of 2007

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Dated this the 8th day of October, 2007

J U D G M E N T

The petitioner is the present manager of the Ikhvathal Islam Vernacular U.P.School, Malippuram. The third respondent is the Arabic Teacher of the school. Originally she was a Rule 51A claimant. According to the petitioner, when a vacancy arose on 2.6.2004 to which the third respondent had a legitimate claim for appointment in recognition of her claim as a 51A claimant, appointment order was issued by the then Manager of the school, to the third respondent, but she insisted that she should be appointed from 1.6.2000. Therefore, another teacher was appointed and the 2nd respondent refused to approve the same. The third respondent filed W.P(C).No. 34948/2004. The said writ petition was allowed and the then manager was directed to appoint the third respondent with effect from 2.6.2004. But by that time, more than an year had elapsed and the third

respondent was appointed on 11.11.2005 with effect from 2.6.2004 as per the direction of this court. Appointment order was forwarded to the 2nd respondent for approval and the 2nd respondent, while approving the appointment, ordered the manager of the school to pay the salary and allowances to the third respondent for the period from 2.6.20004 to 10.11.2005 during which period, the third respondent was kept out of employment by the manager. The amount has also been quantified as Rs.1,26,187/- which was directed to be paid by the manager as per Ext.P3 order of the 2nd respondent. The petitioner is challenging Exts.P2 and P3 to the extent the same direct the manager to pay salary of the third respondent for the period from 2.6.2004 to 10.11.2005.

2. Petitioner's contention is that the manager is not at fault, because, the manager had in fact issued an appointment order to the third respondent and she refused to join duty on the ground that she should be appointed with effect from 1.6.2000. The petitioner would further contend that during the relevant period another teacher was appointed by the manager to whom the manager had paid salary and the Government had not paid

any salary to that teacher. Therefore, the Government is liable to pay salary to the third respondent for the period from 2.6.2004 to 10.11.2005 also, submits the petitioner.

3. Counter affidavits have been filed by the respondents refuting the the averments in the respondents.

4. I have considered the rival contentions in detail.

5. The contention of the petitioner is that the appointment order was issued to the third respondent by the then manager by registered post appointing her when the vacancy arose on 2.6.2004. The third respondent's contention is that although she received a cover, the same contained only blank papers and no appointment order. These rival contentions were specifically considered by this court in Ext.P1 judgment and it was held as under:

> "5. I have considered the rival submissions made at the bar as well as the rival pleadings. I have also considered the documents produced by both sides in support of their rival versions. I have also gone through Rules 51A of Chapter XIV A of the KER as well as the various judicial precedents pertaining to reappointments under Rule 51A Chapter XIV A including the judgment of the Full Bench of this Court in Manager, Trikkur Panchayat Sarvodaya High School v. Seema (2003(2) KLT 62). I am not at all impressed by the argument of the learned counsel for the 4th respondent that the petitioner was offered appointment in recognition of her claim under Rule 51A of Chapter XIVA of KER and that against the vacancy which arose on 2.6.2004. Ext.P5 submitted by the petitioner to the A.E.O. on 26.12.2004 and

> Ext.P6 submitted by her to the manager himself on the next day probabilises the petitioner's version that she has not received any appointment order and that it was not an appointment order which she received in the cover on 24.12.2004. Ext.P3 has attained finality and is liable to be implemented by the 4th respondent-Manager. Therefore, it is declared that the petitioner is entitled to be appointed by the 4th respondent as Arabic Teacher in his school with effect from 2.6.2004.
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> 6. Accordingly, the Writ Petition will stand allowed in the following terms:
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> The respondents 2 and 3 are directed to ensure that the 4th respondent-Manager appoints the petitioner as Arabic Teacher in his school in the vacancy which arose with effect from 2.6.2004 and thereby ensure implementation of Ext.P3 within a maximum period of one month from the date of production of a copy of this judgment. No costs."

(Emphasis supplied)

In the above, the third respondent's contention that appointment order was not received by her, was accepted by this court. The manager had in fact challenged Ext.P1 in appeal and he lost in appeal also. That finding has become final. That being so, the petitioner cannot now take a different stand. Therefore, clearly the third respondent was not given an appointment order as per the procedure prescribed under Rule 51A of Chapter XIVA of the KER. Therefore, that contention cannot be now considered against Exts.P2 and P3 orders also.

6. The contention that since the manager had paid salary to another teacher for the relevant period and therefore, the

Government should pay salary for that period to the 3rd respondent also does not appeal to me. After having refused to appoint the third respondent when vacancy arose, the petitioner cannot now take advantage of his own wrong doing. Further, the Government cannot be directed to pay salary to a teacher who has not worked in the post. At the same time, the third respondent was entitled to be appointed from 2.6.2004 and she was unjustly kept out of employment, denying her salary from 2.6.2004 to 10.11.2005. I am satisfied that the petitioner is liable to make good the loss caused to the third respondent in this regard. Therefore, I do not find any merit in the challenge against Exts.P2 and P3 and therefore, the writ petition is dismissed.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.